

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Spacecom Satellite Communications Services)
S.C.C. Ltd.) File No. SAT-PDR-20020823-00161
Petition for Declaratory Ruling)
For Inclusion of AMOS-2 on the)
Permitted Space Station List)

ORDER

Adopted: July 10, 2003

Released: July 11, 2003

By the Chief, Satellite Division, International Bureau:

I. INTRODUCTION

1. In this Order, we add Spacecom Satellite Communications Services S.C.C. Ltd.'s (Spacecom's) AMOS-2 satellite, licensed by Israel and to be located at 4° W.L., to the Commission's Permitted Space Station List (Permitted List), with certain conditions. As a result of this action, U.S. earth stations with "routine" technical parameters will be able to transmit to AMOS-2 immediately, in certain conventional Ku-band frequencies.1 Downlink transmissions from the AMOS-2 satellite to U.S. Earth stations, which are in non-conventional frequency bands, are not permitted. Placing the AMOS-2 satellite on the Permitted List for Earth-to-space transmissions from the United States should stimulate competition in the United States, provide consumers another alternative in choosing communications providers and services, reduce prices, and facilitate technological innovation.

II. BACKGROUND

2. In the DISCO II Order,2 the Commission implemented the satellite services market-opening commitments made by the United States in the World Trade Organization Agreement on Basic Telecommunications Services (WTO Basic Telecom Agreement). It also established a framework under which it would consider access by foreign satellites not covered by the WTO Basic Telecom Agreement. By allowing non-U.S. licensed satellites to serve the U.S. market, this action provides U.S. consumers more alternatives in choosing communications providers and services, thus advancing the growth of satellite services in the United States and around the globe. Among other things, the DISCO II Order established a procedure by which a service provider in the United States could request immediate access

1 The conventional Ku-band refers to frequencies in the 11.7-12.2 GHz (space-to-Earth) and 14.0-14.5 GHz (Earth-to-space) frequency bands. Spacecom proposes to use AMOS-2 to receive transmissions from U.S. earth stations only in the 14.0-14.5 GHz band.

2 Amendment of the Commission's Regulatory Policies To Allow Non-U.S.-Licensed Space Stations To Provide Domestic and International Satellite Service in the United States, Report and Order, IB Docket No. 96-111, 12 FCC Rcd 24094 (1997) (DISCO II or DISCO II Order).

to a foreign in-orbit satellite that would serve the U.S. market.³ This procedure requires a U.S. earth station operator seeking to communicate with a non-U.S. satellite to file an earth station application for an initial license or for a modification of its existing earth station license, listing the foreign satellite as a point of communication.⁴

3. In the *DISCO II First Reconsideration Order*, the Commission streamlined the process by allowing the operators of in-orbit non-U.S. satellites offering fixed satellite service to request authority to provide space segment capacity service to licensed earth stations in the United States.⁵ Under this process, the Commission conducts the analysis established in the *DISCO II Order* for a particular non-U.S.-licensed space station and a particular satellite service. If the satellite granted access operates in the conventional C- and Ku-bands, the satellite operator may also request authority to be added to the "Permitted List."⁶ This list identifies all satellites and services with which U.S.-licensed earth stations with routinely authorized technical parameters ("ALSAT" earth stations) are permitted to communicate without additional Commission action, provided that those communications fall within the same technical parameters and conditions established in the earth stations' original licenses.⁷ The Permitted List is maintained on our website, and is also available via fax or e-mail.⁸

4. On August 23, 2002, Spacecom, an Israeli satellite services provider, filed a Petition for Declaratory Ruling to add its AMOS-2 communications satellite, which is to be launched later this year to the 4° W.L. orbital position, to the Permitted List.⁹ Spacecom proposes to use the AMOS-2 satellite to provide a wide range of one-way telecommunications services, including television and audio distribution, high speed Internet services, broadband communications services, and VSAT network services in the 14.0-14.5 GHz (uplink) frequency band from the east coast of the United States to international points.¹⁰ AMOS-2 is licensed by Israel. No parties filed oppositions to this petition.

³ *DISCO II*, 12 FCC Rcd at 24174 (para. 186).

⁴ When an earth station has been granted authority to communicate with a specific satellite or group of satellites, those satellites are referred to in the earth station license as "points of communication."

⁵ *Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, First Order on Reconsideration, IB Docket No. 96-111, 15 FCC Rcd at 7207, 7212 (para. 10) (1999) (*DISCO II First Reconsideration Order*).

⁶ *Id.* at 7212-13 (paras. 10-11). This request is to be in the form of a Petition for Declaratory Ruling.

⁷ *Id.* at 7215-16 (para. 19).

⁸ *Id.* This web site address is <http://www.fcc.gov/ib/sd/se/permitted.html>.

⁹ Petition for Declaratory Ruling to Add Spacecom Satellite Communications Services S.C.C. Ltd. AMOS-2 at 4° W.L. to the Commission's Permitted Space Station List, filed August 23, 2002 (AMOS-2 Permitted List Petition). See also Supplement to Petition for Declaratory Ruling, filed March 14, 2003 (AMOS-2 Permitted List Supplemental Petition) and Errata to Supplement to Petition for Declaratory Ruling, filed March 17, 2003 (Errata to AMOS-2 Permitted List Supplemental Petition).

¹⁰ AMOS-2 Permitted List Petition, Attachment A, at (4), and Annex 1. See also AMOS-2 Permitted List Errata to Supplement Petition at 1-2, clarifying Spacecom's request. We note that because this Order only permits AMOS-2 to receive transmissions from earth stations operating in the 14.0-14.5 GHz band, plus the fact that Spacecom must obtain authority on a case-by-case basis to allow earth stations in the U.S. to receive transmissions from AMOS-2 on its North American beam that uses only extended Ku-band frequencies for its downlink, a VSAT network in the United States using AMOS-2 would be precluded.

III. DISCUSSION

A. Permitted List Request

1. General Framework

5. In the DISCO II Order, the Commission set forth the public interest analysis applicable in evaluating applications to use non-U.S. licensed space stations to provide satellite service in the United States. This analysis considers the effect on competition in the United States,¹¹ eligibility and operating (e.g., technical) requirements,¹² spectrum availability,¹³ and national security, law enforcement, foreign policy, and trade concerns.¹⁴ We evaluate Spacecom's Ku-band request under this framework.

2. Competition Considerations

6. In *DISCO II*, the Commission established a rebuttable presumption that entry by non-U.S. satellites licensed by WTO Members to provide services covered by the U.S. commitments under the WTO Basic Telecom Agreement will further competition in the United States.¹⁵ These commitments include fixed-satellite service, but specifically exclude direct-to-home (DTH) services, Direct Broadcast Satellite Service (DBS), and Digital Audio Radio Service (DARS).¹⁶ This means that we will presume that WTO-member licensed satellites providing WTO-covered services satisfy the competition component of the public interest analysis. The Commission concluded that the market access commitments made under the WTO Basic Telecom Agreement will help ensure the presence and advancement of competition in the satellite services market and yield the benefits of a competitive marketplace to consumers in the United States and other countries.¹⁷

7. In this case, the presumption in favor of entry applies to AMOS-2, which is licensed by Israel, a WTO Member,¹⁸ and which will be used to provide non-DTH fixed-satellite services to customers in the United States. No comments were filed to rebut the presumption that AMOS-2's entry into the U.S. market is pro-competitive. Therefore, we conclude that Spacecom's proposed entry for purposes of offering fixed-satellite services, excluding DTH, will enhance competition for these services in the U.S. market. As a condition on AMOS-2's placement on the Permitted List, however, we prohibit

¹¹ *DISCO II*, 12 FCC Rcd at 24107-56 (paras. 30-145).

¹² *DISCO II*, 12 FCC Rcd at 24159-69 (paras. 151-74).

¹³ *DISCO II*, 12 FCC Rcd at 24157-59 (paras. 146-50).

¹⁴ *DISCO II*, 12 FCC Rcd at 24169-72 (paras. 175-82).

¹⁵ *DISCO II*, 12 FCC Rcd at 24112 (para. 39).

¹⁶ *DISCO II*, 12 FCC Rcd at 24104 (para. 25).

¹⁷ *DISCO II*, 12 FCC Rcd at 24112 (para. 39); 24157 (para. 143).

¹⁸ See http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (a list of WTO members). See also http://www.wto.org/english/tratop_e/serv_e/telecom_e/telecom_commit_exempt_list_e.htm (a list of WTO members that made market-access commitments, with links to each member's schedule of commitments and Article II exemptions).

U.S. earth stations from accessing AMOS-2 for DTH, DBS, or DARS.¹⁹

3. Spectrum Availability

8. In *DISCO II*, the Commission determined that, given the scarcity of orbit and spectrum resources, it would consider spectrum availability as a factor in determining whether to allow a foreign satellite to serve the United States. This is consistent with the Chairman's Note to the WTO Basic Telecom Agreement, which states that WTO Members may exercise their domestic spectrum/frequency management policies when considering foreign entry. Thus, in *DISCO II*, we stated that when grant of access would create interference with U.S.-licensed systems, we may impose technical constraints on the foreign system's operations in the United States or, when conditions cannot remedy the interference, deny access.

9. In this case, AMOS-2 will receive transmissions from earth stations operating in the 14.0-14.5 GHz portion of the Ku-band at the 4° W.L. orbital position. There are no U.S.-licensed satellites operating in the Ku-band within two degrees of AMOS-2. Further, no party has raised interference issues with respect to AMOS-2's operations at 4° W.L. Thus, allowing AMOS-2 to serve the United States from the 4° W.L. orbit location in this frequency band, by itself, will not affect operations of any U.S.-licensed satellites nor contravene the Commission's spectrum/frequency management policies.

10. As a general rule, because of interference concerns with other services, ALSAT-designated earth stations are authorized to communicate with Permitted List satellites only in the conventional C- and Ku-bands without further Commission approval.²⁰ Although Spacecom's AMOS-2 satellite will operate in the conventional Ku-band uplink frequencies (14.0-14.5 GHz), it does not operate in the conventional Ku-band downlink frequencies (11.7-12.2 GHz).²¹ Rather, the AMOS-2 satellite operates downlinks in non-conventional or "extended" Ku-band frequencies with coverage areas illuminating the United States.²² As in our previous decisions,²³ we emphasize that placing AMOS-2 on the Permitted List authorizes ALSAT earth station operators to access AMOS-2 only in the conventional Ku-band frequencies. This means that ALSAT earth station operators may only transmit to AMOS-2 in the uplink frequencies of 14.0-14.5 GHz. ALSAT earth station operators may not transmit to AMOS-2 in any other band, and may not receive transmissions from AMOS-2 in any band without first obtaining authorization to do so.²⁴

¹⁹ We recognize that because we are not permitting AMOS-2 to downlink to earth stations in the United States, the satellite cannot provide DTH, DBS, and DARS to customers in the United States as a practical matter. Nevertheless, we add the prohibition to make it clear that these services are not authorized.

²⁰ *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7215 (para. 19).

²¹ AMOS-2 Permitted List Petition, Attachment A, at (4).

²² *Id.* AMOS-2 proposes to operate its downlinks in the 11.45-11.7 GHz frequency band.

²³ See e.g. *European Telecommunication Satellite Organization (EUTELSAT) Petitions for Declaratory Ruling To Add Eutelsat Satellites Atlantic Bird™ 1 at 12.5° W.L and Atlantic Bird™ 2 at 8° W.L to the Commission's Permitted Space Station List*, Order, 16 F.C.C. Rcd 15961 (*Eutelsat TM 1 and TM 2 Permitted List Order*).

²⁴ We recognize that Spacecom has proposed to use its AMOS-2 satellite to offer only one-way services from the United States to international points in the conventional Ku-band. Nevertheless, we include in this Order a condition that earth station operators are not authorized to communicate with Spacecom's AMOS-2 satellite in the extended Ku- (continued....)

4. Eligibility Requirements

11. The Commission's *DISCO II Order* requires that space station operators not licensed by the Commission meet the same legal, financial, and technical qualifications required of U.S.-licensed space station operators. Nothing in the record raises concerns about Spacecom's legal qualifications to provide satellite services in the United States.

12. Further, we find Spacecom financially qualified. Spacecom has demonstrated that its current assets exceed the costs of constructing, launching, and operating AMOS-2 for one year as required under our rules.²⁵ We also note that AMOS-2 is on manifest for launch later this year.

13. Finally, we must review AMOS-2's technical qualifications. The Commission's satellite licensing policy is predicated upon two-degree orbital spacing between geostationary satellites. This policy permits the maximum use of the geostationary satellite orbit. Applicants must demonstrate that they comply with the Commission's technical requirements, designed to permit two-degree orbital spacing, to be authorized to provide service in the United States. Based on our review of the technical information in Spacecom's petition for declaratory ruling, we conclude that AMOS-2 complies with all applicable Commission technical rules for operation in the 14.0-14.5 GHz band.

14. Spacecom also proposes to conduct its tracking, telemetry, and control (TT&C) functions from a control center located in Israel.²⁶ Because no TT&C functions will be conducted from earth stations located in the United States, we need not consider whether Spacecom's proposed TT&C operations comply with Part 25 of the Commission's rules.

5. Other Issues

15. As described above, under *DISCO II*, national security, law enforcement, foreign policy, and trade concerns are included in the public interest analysis. Nothing in the record before us raises any such concerns.

16. Finally, pursuant to the Bureau's Public Notice of December 17, 1999, placing a satellite on the Permitted Space Station List will permit international common carriers holding appropriate global international Section 214 authorizations to provide international telecommunications services using the satellite without the need to obtain additional Section 214 authority.²⁷ We find that it is in the public interest to allow common carriers with global international Section 214 authorizations to communicate with AMOS-2.

IV. CONCLUSION

17. We have performed a *DISCO II* analysis in this Order, and have determined that the
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band frequencies to avoid confusion and to ensure that all prospective customers have adequate notice of the terms of Spacecom's access into the U.S. market using AMOS-2.

²⁵ 47 C.F.R. §§ 25.114 and 25.140. AMOS-2 Permitted List Petition, Attachment B.

²⁶ AMOS-2 Permitted List Petition, Attachment A, at (4).

²⁷ See *International Bureau Announced Process for Providing Service Under Global International Section 214 Authorizations Using Approved Non-U.S.-Licensed Satellite Systems Listed on the Permitted Space Station List*, Public Notice, DA 99-2844 (released Dec. 17, 1999).

conventional Ku-band operations of AMOS-2 are two-degree spacing compliant. Consequently, we add AMOS-2 to the Commission's Permitted List for one-way Earth-to-space communications, subject to the other conditions set forth in this Order. This will allow U.S.-licensed earth stations with "ALSAT" designations to transmit to AMOS-2 without modifying their licenses. We emphasize, however, that AMOS-2 is not permitted to provide DTH, DBS, or DARS to users in the United States, and its inclusion on the Permitted List is so conditioned. We further emphasize that ALSAT-designated earth stations are only authorized to transmit to the AMOS-2 satellite in the 14.0 – 14.5 GHz band, and such earth stations are not authorized to receive transmissions from the AMOS-2 satellite unless their licenses are modified to permit such operation.

V. ORDERING CLAUSES

18. Accordingly, IT IS ORDERED that, pursuant to Sections 303(r), 308, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§303(r), 308, 309, 310, and Sections 25.121(a) and 25.137(c) of the Commission's rules, 47 C.F.R. §§25.121(a) and 25.137(c), Spacecom's Petition for Declaratory Ruling to Add Spacecom Satellite Communications Services S.C.C. Ltd.'s AMOS-2 at 4° W.L. to the Commission's Permitted Space Station List, File No. SAT-PDR-20020823-00161, IS GRANTED.

19. IT IS FURTHER ORDERED that any earth station in the United States with "ALSAT" designated as a point of communication, IS GRANTED authority to provide Fixed Satellite Services (FSS), to, from, or within the east coast of the United States, by accessing the AMOS-2 satellite, at the 4° W.L. orbit location, subject to the conditions set forth in each earth station license and the following conditions:

- (a) ALSAT-designated earth stations are only authorized to transmit to AMOS-2 in the 14.0-14.5 GHz frequency band, consistent with the technical parameters contained in the earth station authorization. Communications in any other band are not permitted.
- (b) ALSAT-designated earth stations may not receive transmissions from the AMOS-2 satellite unless expressly authorized by the earth station license.
- (c) ALSAT-designated earth stations are not authorized to use AMOS-2 to provide any Direct-to-Home (DTH) service, Direct Broadcast Satellite (DBS) service, or Digital Audio Radio Service (DARS) to, from, or within the United States.

20. IT IS FURTHER ORDERED that the AMOS-2 satellite, together with the conditions set forth in this Order IS PLACED on the "Permitted Space Station List."

21. This Order is issued pursuant to Section 0.261 of the Commission's rules on delegated authority, 47 C.F.R. §0.261, and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. §§1.106, 1.115, may be filed within 30 days of the date of the release of this Order. (See 47 C.F.R. § 1.4(b)(2).)

FEDERAL COMMUNICATIONS COMMISSION

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